

Contains Confidential or Exempt Information	YES part Appendices 1 to 4 contain confidential information that are exempt and not for publication by virtue of paragraph 5 of part 1 of Schedule 12A to the Local Government Act 1972.
Title	Highways Term Contract Review and Extension
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Author	Tony Singh, Head of Highways
Portfolio	Cabinet Member for Environment and Climate Action – Cllr Jasbir Anand
For Consideration By	Cabinet
Date to be Considered	16 th March 2021
Implementation Date if Not Called In	29 th March 2021
Affected Wards	All
Keywords/Index	Contract Extension, Highway Maintenance Works, Minor Civil Engineering Works, Highways Works

Purpose of Report:

To summarise a review of the current Highways Maintenance Services (HMS) and Minor Civil Engineering Works (MCEW) contracts and seek approval to extend both contracts for a further period of 4 years with effect from April 2022.

1. Recommendations

It is recommended that Cabinet:

- (i) Approves the extension of the Highway Maintenance Services contract with Murrill Construction Limited from 1st April 2022 for 4 years, with the approximate expenditure of £2.5m per annum to be funded from the existing £3.6m Highways revenue budget and agrees to a variation of the contract terms to remove the provisions permitting other local authorities joining the contract.
- (ii) Approves the extension of the Minor Civil Engineering Works contract with Murrill Construction Limited from 1st April 2022 for 4 years, with the approximate expenditure of £4.0m per annum to be funded from the existing Highways capital budget and agrees to a variation of the contract terms to remove the provisions permitting other local authorities joining the contract.

2. Reason for Decision and Options Considered

- 2.1 Under the Highways Act 1980 the council, as Highway Authority for most of the public roads and footways within the borough, has a statutory responsibility to ensure public highways are maintained to a safe standard. This will cover everything from a standard “pothole” repair to gritting the roads and pavements deemed necessary during freezing conditions and snowfall. In addition to these statutory duties the Council also has a responsibility to endeavour to improve the highway network where possible. This is carried out using capital funding which can be from Ealing Council’s own approved budgets or from external partners such as Transport for London (TfL) or through developers’ S106 / Community Infrastructure Levy (CIL) funds.
- 2.2 The contracts for the current Highway Maintenance Services and Minor Civil Engineering Works contracts were both awarded to Murrill Construction Limited and approved by Cabinet on 11th July 2017. Both contracts expire in March 2022 although there is an option to extend each of them (subject to Cabinet approval) for two periods of up to 24 months each, that is a total of up to 48 months each. These contracts were awarded at a time when market rates were low, and these contracts have provided good value for Ealing.
- 2.3 In respect of the Highway Maintenance Services contract awarded in 2017 and the Minor Civil Engineering Works contract also awarded in 2017, Murrill Construction Limited were the lowest bidder.
- 2.4 A detailed commercial strategy was formulated and presented to the Joint Contracts Board in December 2020, as set out in Appendix 2 and they endorsed the recommendation to extend the contracts by 4 years. The strategy included a benchmarking exercise which represents the most effective best Value for Money solution for the Council, its stakeholders, and its residents.
- 2.5 Officers will continue to monitor and assess market conditions within the London area and determine the most appropriate and beneficial delivery method on expiry of the contract extensions.

Contractor Performance

- 2.7 Murrill Construction Ltd have provided a good standard of service over the last four years. They have successfully exceeded key contract performance indicators (for details of current performance see Appendices 3 and 4) and have represented value for money in the services they have provided to Ealing.
- 2.8 Of the 30 Key Performance Indicators (KPI) that cover the two contracts, the only performance issues of note in exception to the above were:
 - Minor Civils - KPI 7 (Invoices and Applications (accurate, complete and on time)), which failed to meet the expected level for the month of June 2020.

- Highway Maintenance - KPI5 (all works orders not completed by the time for completion are completed within 3 days of that date), which failed to meet the expected level for the month of August 2020.
- Highway Maintenance – KPI7 (Traffic Management Act), which failed to meet the expected level for the month January through to March 2020.

However, since this time all the KPI's have been achieved or exceeded the agreed levels.

3 Key Implications

- 3.1 Should the contracts not be extended as recommended, then annual savings of £0.120m would have to be found from elsewhere within the Highway Service budget, the effect of this would have a detrimental impact on service delivery as highway works would have to be reduced.
- 3.2 Should the contract not be extended, then taking account of the benchmarking results and the impact Brexit will have on the construction industry, we anticipate that contract prices will increase by an average of at least 11.45%. This would equate to potentially an annual budget pressure of £0.286m (revenue) and £0.458m (capital).
- 3.3 Failure to extend or retender this contract could potentially lead to the Council's Highways infrastructure not being maintained to a safe standard therefore increasing highway related insurance claims against the Council.

4 Financial

- 4.1 The proposed contract extension will not commit Ealing Council to any minimum level of expenditure during any financial year. This contract provides no exclusivity to Murrill Construction Limited and the Council retains the right to use other delivery contractors should the need arise.
- 4.2 In 2018 Murrill Construction Limited agreed an annual saving of £0.050m across the two contracts. This has arisen following changes to the terms and conditions which enabled early payment to be made once invoices are received. If the contracts are extended for 4 years, the total potential annual saving will amount to £0.200m from April 2022.
- 4.3 In addition, the contractor has offered a maximum further saving of £0.070m per annum commencing 1st April 2021 (in the year before the extension is awarded). This has arisen following further capital investments with cost effective machinery and plant resulting in cost savings associated with reduced fuel costs and other efficiencies including potential reduction in CPI uplift. Similar costs are being passed on to the contractor by their suppliers. The total saving potentially amounts to £0.350m over 5 years.

- 4.4 The combined savings from changes to the terms and conditions and innovation through the commercial strategy amounts to £0.120m per annum. To the end of the extended contracts this amounts to £0.550m.
- 4.5 As detailed in Appendix 2, by extending the contacts for the full 4 years the Council would potentially not need to increase their revenue budgets by a total of £0.286m per annum, which over 4 years which equates to £1.144m. Similarly, by extending the contacts for the full 4 years the Council would potentially not need to increase their capital budgets by a total of £0.458m per annum, which over 4 years equates to £1.832m (capital). The commercial strategy confirms that the total estimated contract extension costs will be managed within available budget.

5. Legal

- 5.1 A competitive tender procedure was followed in July 2017 for the letting of the Highway Maintenance Services and Minor Civil Engineering Works contracts.
- 5.2 The tender submitted by Murrill Construction Ltd represented the most economically advantageous tender evaluated on quality and price for both the Highway Maintenance Service and for the Minor Civil Engineering Works. The contract extension will comply with the Council's Contract Procedure Rules.
- 5.3 The contract was awarded on the basis of a five-year contract period with a possible minimum two year and maximum four-year extension. Therefore, the contract may be lawfully extended under the Public Contracts Regulations 2015 for the proposed 4 years.
- 5.4 Further legal comments are set out in Confidential Appendix 1.

6. Value For Money

- 6.1 Murrill Construction Limited ranked first in quality and pricing evaluation on each contract in 2017 and were the lowest bidder.
- 6.2 As detailed in Appendix 2, the recent benchmarking comparison of prices identified that Murrill Construction Limited was the most commercially advantageous, and on average their prices were lower than the next placed tested contracts.
- 6.3 The annual cost of the Highways Maintenance Services contract is £2.5m (revenue) per annum and the Minor Civil Engineering works contract is £4.0m (capital) per annum. Taking account of the projected increase in contract prices, the retendering of these contracts could result in annual budget increase of £0.286m (revenue) and £0.458k (capital).

- 6.4 Extending the contracts will also provide direct cost savings to the Council by mitigating the cost of procuring of new contracts and the cost of new mobilisation (passed to the Council) if new contractors are appointed.
- 6.5 The contracts will continue to deliver efficient and cost-effective services, while the performance based KPI regime will continue incentivise the contractor to maintain high standards of quality.
- 6.6 Highways have previously carried out a detailed evaluation of the London Highways Alliance Contract (LoHAC) which confirmed that it was more expensive than Ealing Council's current contract. Similar cost comparisons have also been carried out by other local authorities who also concluded that the LoHAC contract rate was more expensive than their existing contracts. Since the original evaluation was carried out in 2017 the LoHAC contract has been re-tendered and re-awarded. However, initial feedback is that although the contract has been reshaped from four to three new larger areas there has not been any significant reduction in cost. The Council has the option (subject to Cabinet approval) to join the LoHAC contract.

7. Sustainability Impact Appraisal

- 7.1 Environmental considerations and sustainability were given due consideration during the tender process and form a key part of the current contract.

8. Risk Management

- 8.1 In the event the contracts are not extended, procurement of new contracts would be required at a time when at a time when resources are under increased strain due to the impact of Covid 19.
- 8.2 The ongoing Covid 19 conditions and the impact materials supply and labour costs are expected to significantly increase prices in the current market conditions. Extending the contracts will secure competitive rates that are subject to agreed industry agreed price fluctuations.
- 8.3 The changing market conditions may result in some tenderers going out of business and this could further reduce the competitive market
- 8.4 The benchmarking exercise has shown that the current contract is extremely competitive and there is a risk to Murrill Construction Limited to continue to deliver the contract at the agreed rates. However, since 2018 the contractor's financial performance and profitability has been consistent and they are credit rated as 'low risk' with a good credit score of 96. The risk is therefore small.

9. Community Safety

- 9.1 Ealing Highways ensures that Ealing Council continues to maintain its legal duty of care in respect of public safety.

9.2 Any disruption to the service may result in delays to planned and reactive maintenance works, which could also affect the implementation of traffic and transport projects.

10. Links to the 3 Key Priorities for the Borough

- Good, genuinely affordable homes the extension of the contract will enable us to continue to deliver a sustainable and effective public realm which in turn will encourage developers to invest in the borough which will help to deliver more affordable homes.
- Opportunities and living incomes the extension of the contract will ensure that local supply contracts and jobs are retained and new opportunities are provided to local businesses and people.
- A healthy and great place the construction of a high quality streetscape environment creates a healthy and positive place for all users and residents. Furthermore, highway works form a vital role in providing access for pedestrians, cyclists, and vehicle users.

11. Equalities, Human Rights and Community Cohesion

11.1 Standards have been incorporated within the Contract specification to ensure that the service provider complies with the Council's policies for equalities.

12. Staffing/Workforce and Accommodation implications:

12.1 There are no staffing or work force implications.

13. Property and Assets

13.1 There are no implications for any Council owned properties or assets.

14. Any other implications:

14.1 None

15. Consultation

15.1 A report detailing the Commercial Strategy was presented to the Contracts Board with full consultation carried out with Legal and Finance.

16. Timetable for Implementation

16 th March 2021	Cabinet decision to extend contract
29 th March 2021	End of Call-In Period
April 2021	Notification to the Contractor
April 2021	Extension agreement

17. Appendices

Appendix 1: Confidential Legal Notes

Appendix 2: Confidential Commercial Strategy

Appendix 3: Confidential Key Performance Indicators (HMS)

Appendix 4: Confidential Key Performance Indicators (MCEW)

18. Background Information

- Appointment of Murrill Construction Limited for the provision of Highway Maintenance Services & Minor Civil Engineering Works – Cabinet Report 11th July 2017.

Consultation

Name of consultee	Post Held	Date sent to consultee	Response received from consultee	Comments appear in report para:
Internal				
Councillor Julian Bell	Leader of the Council and Executive Member for Regeneration and Transport			
Councillor Anand	Portfolio Holder for Environment and Highways			
Gary Alderson	Interim Executive Director of Place	16/02/21	18/02/21	Throughout
Dipti Patel	Director of Place Delivery	10/2/21	15/2/21	Throughout
Chuhr Nijjar	Senior Lawyer (Legal Contracts)	8/2/21	12/2/21	Throughout
Jackie Adams	Head of Legal (Property & Regulatory)	4/2/21	5/2/21	Throughout
Liz Blackburn	Finance Manager Capital & Projects	8/2/21		
Sarah Hadland	Category Lead, Commercial Hub	8/2/21	9/2/21	Throughout
Yalini Gunarajah	Finance Manager Place	4/2/21	5/2/21	1.2,4,6
Christopher Neale	Principal Accountant Environment	4/2/21	8/2/21	Throughout
External				

None				
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Report History

Decision type:	Urgency item?
EITHER: Key decision OR Non-key decision OR For information (delete as applicable)	No
Report no.:	Tony Singh
	Head of Highways